# IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

## W.A.No.2153 of 2002(A)

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AGAINST THE JUDGEMENT IN O.P.NO.22544/2001 Dated 31/07/2001

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**APPELLANTS**: RESPONDENTS IN THE O.P.:-

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1. THE STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF FOREST, THIRUVANANTHAPURAM.

3. THE CUSTODIAN OF VESTED FORESTS, THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SMT.MEERA.

**RESPONDENTS**: PETITIONERS IN THE O.P:-

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1. V.K.RAJALAKSHMI W/O. LATE V.K.GOPALAKRISHNAN, KADAMPAZHIPURAM VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. V.K.BIJU D/O. LATE V.K.GOPALAKRISHNAN, KADAMPAZHIPURAM VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT.

3. V.K.BINU D/O. LATE V.K.GOPALAKRISHNAN, KADAMPAZHIPURAM VILLAGE, OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SHABU SREEDHARAN
SRI.P.A.NOOR MUHAMMED
SRI.C.R.SIVAKUMAR
MS.NAINA RAJI.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L.Dattu,C.J. & K.T.Sankaran,J.**

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**W.A.No.2153 of 2002-A**

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Dated, this the 27th day of June, 2007

**JUDGMENT**

**K.T.Sankaran,J.**

Respondents in O.P.No.22544 of 2001 are the appellants. The writ petition was filed by the respondents herein for a writ of mandamus commanding the respondents in the writ petition to handover possession of the land involved in O.A.No.442 of 1975 on the file of Forest Tribunal, Palakkad to the writ petitioners. The writ petition was disposed of by judgment dated 31st July, 2001 directing the 3rd respondent in the writ petition to consider the request of the writ petitioners and to restore the property.

2. The contention of the appellants is that pursuant to the judgment passed by the learned Single Judge when steps were being taken to consider the request of the applicants, a proposal was made to notify the land in question under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance (Ordinance No.16 of 2001). The learned Government Pleader submits that the land in question is also included in the notification under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (21 of 2005).

3. The learned counsel appearing for the respondents/writ petitioners contends that the land in question does not come under the expression "*ecologically fragile land*" and it could not come within the purview of the Act of 2003. The learned counsel submits that the land in question was a fully cultivated land and, therefore, does not come within the purview of the Act of 2003.

4. These are all matters for the 3rd appellant, who is the 3rd respondent in the writ petition, to consider after affording an opportunity of being heard to the petitioners in the writ petition.

5. Accordingly, the Writ Appeal is disposed of as follows:

(i) Appellant No.3, viz., the Custodian of Vested Forests, Thiruvananthapuram, shall consider the request of the writ petitioners to restore the land involved in O.A.No.442 of 1975 on the file of Forest Tribunal, Palakkad after affording an opportunity of being heard to the writ petitioners.

(ii) The question whether the land is included in the notification under the Act of 2003 shall be considered and the writ petitioners shall be entitled to put forward all their contentions before appellant No.3.

(iii) The orders shall be passed by appellant No.3 within a period of six months.

C.M.P.No.5595 of 2002 is dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-